Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Telephone Number Portability

CC Docket No. 95-116

REPLY COMMENTS OF JONES INTERCABLE, INC.

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October 12, 1995

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Pursuant to the Commission's Notice of Proposed Rulemaking in this matter,[1] Jones Intercable, Inc. ("Jones") respectfully submits its Reply Comments herein.

INTRODUCTION AND SUMMARY

The comments in this proceeding demonstrate the critical need for service provider number portability to make local exchange competition possible. Further, the comments demonstrate that the Commission should mandate prompt implementation of a uniform, nationwide number portability solution using a database technology broadly similar to that used to provide 800 number portability.

Jones agrees with those commenters who explain why the costs of implementing number portability should be recovered by each individual LEC, including new entrants, as part of the cost of providing local exchange service. This approach will provide all competitors with a strong incentive to provide number portability in the most efficient way possible, while avoiding unfairly burdening any competitor with costs actually incurred by its rivals. For similar reasons, Jones agrees that incumbent LECs and new entrants should also absorb the costs they

[1] *In the Matter of Telephone Number Portability*, Notice of Proposed Rulemaking, FCC 95-284 (released July 13,1 995) ("*NPRM*").

incur in providing interim portability solutions. At most, rates charged to rivals for such interim solutions should be set at a substantial discount below incremental cost.

The incumbent LECs take issue with many of these conclusion. Of course, as more and more inroads are made on the LECs' traditional monopolies, their natural incentive is to do whatever they can to slow the growth of competition. The Commission, therefore, should view the LECs' submissions with a jaundiced eye. Specifically, the Commission should reject LEC claims that number portability is unnecessary; that there is insufficient information about how it might be implemented; that it is unduly costly; or that service provider portability should be delayed until all portability questions (including both geographic and service portability) are resolved. To the contrary, based on the record of this proceeding, the Commission should establish a firm and aggressive timetable for the deployment of number portability.

I. IMPLEMENTATION OF SERVICE PROVIDER PORTABILITY IS A CRITICAL REQUIREMENT OF LOCAL EXCHANGE COMPETITION.

The comments show that there is a clear need for service provider portability if meaningful competition in the local exchange market is ever to develop. Many commenters explained that both formal surveys and anecdotal evidence support the Commission's conclusion that number portability is necessary to the development of competition in the local exchange. Indeed, generally only the incumbent LECs and their trade associations have questioned the need for, and potential benefits of, service provider portability.

The comments clearly establish that subscribers will generally not be willing to switch local service providers if they are not able to retain their present telephone numbers. For example, both MCI and MFS presented studies demonstrating consumers' reluctance to switch local exchange providers when to do so they would be required to change telephone numbers — even if the new provider offered lower prices and comparable or better service. In the MFS survey, 81% of customers said that they were either "not very likely" or "not at all likely" to

change their telephone numbers in order to receive comparable or better service and cost.[2] Moreover, 98% of customers said that when switching telecommunications companies, retaining their present business telephone number was "very important" to them.[3]

In a Gallup survey commissioned by MCI, 83% of business customers responded that retaining their telephone number was "very important" when switching service providers.[4] The survey found that 80% of residential customers are "unlikely" or "somewhat unlikely" to switch service providers if they had to incur a telephone number change.[5] The MFS and MCI study results alone constitute overwhelming evidence that without service provider number portability, competition will not develop in the local exchange market.[6]

These results should not be surprising, in that the Commission has already held that requiring a telecommunications provider's customers to change telephone numbers imposes a "significant competitive disadvantage[]" on the provider.[7] In the *708 Relief Plan* case, the Commission addressed a situation that raises concerns parallel to those raised by number portability. In response to impending area code number exhaust in the Chicago area, Ameritech had proposed a plan under which all wireless and cellular customers would have to relinquish their telephone numbers back to Ameritech in return for new numbers.[8] The Commission held that Ameritech's plan was unreasonably discriminatory in that allowing Ameritech customers to

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[2] MFS Comments at 2-3.

[3] *Id.* at 2.

[4] MCI Comments at 2.

[5] *Id.* at 2-3.

[6] Indeed, over ten years after the introduction of competition in the long distance market, AT&T still holds approximately 60% of the market (compared to less than 20% by MCI) despite the fact that consumers have never had to change their telephone numbers to change long distance carriers. *See* Statistics of Common Carriers, Table 1.4 (1993-1994 Edition).

[7] *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois,* 10 FCC Rcd. 4596, ¶ 35 (1995) ("*708 Relief Plan*").

[8] *Id.* at ¶¶ 3-4.

retain their telephone numbers but requiring wireless and cellular customers to relinquish theirs would "confer a significant competitive advantage" on Ameritech. The Commission recognized that Ameritech would benefit because its customers would be able to avoid the inconvenience associated with number changes, while Ameritech's competitors would suffer competitively from the costs and inconveniences imposed on their customers, such as reprogramming equipment, changing to new numbers, and informing callers of the new number.[9]

For these reasons, the Commission should conclude that the extensive benefits of local exchange competition — enhanced consumer choice, lower prices, new services, and improved efficiency in the operations of incumbents and new entrants alike — are simply not achievable without the implementation of service provider portability.

The only opponents of this conclusion are the incumbent LECs. This is understandable, since the provision of local exchange service provides them with revenues in excess of $80 billion dollars annually.[10] To protect those revenues, the LECs and their trade associations have presented comments that, if credited, would substantially delay the introduction of meaningful local exchange competition. If the LECs are to be believed, the Commission should not implement number portability until after a series of industry committee studies of whether there is a need for number portability, and the exact cost of number portability; after additional studies of proposed technical models to reach an industry consensus on the correct long-term technical model; and after further rounds of public comment on the industry's tentative proposals. After these rounds of studies and committee deliberations, the LECs would then have the Commission adopt only a broad scheme under which LECs could develop their own network solutions to implement number portability.[11]

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[9] *Id.* at ¶ 27.

[10] Statistics of Common Carriers, Table 2.1 (1993/1994 edition). The $80 billion figure relates to the BOCs and the GTOCs alone.

[11] *See, e.g.,* Comments of SBC Communications at 10 ("SBC Comments"); Comments of United States Telephone Association at 6 ("USTA Comments").

The Commission should decline this invitation to sink into regulatory quicksand. The LECs' proposals are fully explained by the fact that they have nothing to gain from the implementation of service provider portability, and everything to lose. Each month that the issue is studied rather than resolved is another month of unimpeded LEC control of essentially all local exchange revenues. While there are certainly some complexities to number portability, comments by numerous industry participants — and, particularly, those without billions of dollars of monopoly local exchange revenues to protect — show that managing those complexities is well within the ability of the nation's telecommunications industry. The same LEC industry that has over the years managed the deregulation of CPE, the transition to equal access, the nearly ubiquitous deployment of digital switching and SS7 signaling and, notably, the implementation of 800 number portability, should not be heard now to complain that service provider portability is just too complicated to handle without years of additional study and analysis.

II. PROMPT IMPLEMENTATION OF A UNIFORM SERVICE PROVIDER PORTABILITY DATABASE PLAN WILL BEST SERVE THE PUBLIC INTEREST.

The Commission correctly recognized that market forces alone are unlikely to drive the development and deployment of a number portability solution,[12] and sought comments on whether it should adopt a nationwide number portability model, and whether it should mandate a "date certain" by which LECs would be required to implement that solution.[13] The record indicates that the answer to both questions is "yes."

A. The Commission Should Adopt And Mandate A Uniform, Nationwide Service Provider Number Portability Solution.

Numerous parties agreed with the Commission's conclusion that a mandatory, nationwide service provider portability solution is needed to avoid the creation of numerous

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[12] *NPRM* at ¶ 28.

[13] *Id.* at ¶¶ 32, 33.

inconsistent and inefficient approaches.[14] Such a result would thwart the development of local exchange competition, to the detriment of interstate telecommunications.[15] Indeed, the Ad Hoc Coalition of Competitive Carriers ("Ad Hoc") pointed out that allowing number portability to be developed state-by-state would undoubtedly benefit incumbent LECs, who only serve a few states, and who exercise significant influence in those states.[16] Moreover, as Jones noted in its comments, the prospect of different portability solutions in different states would present a potential new entrant with daunting technical and operational challenges. Clearly, the Commission should adopt and mandate a uniform, nationwide number portability solution.

There also is broad consensus that the Commission should initially focus its attention on implementing service provider portability.[17] As an historical matter, telephone consumers are accustomed to having to change telephone numbers when moving from one location to another. Accordingly, geographic number portability, at least in the short term, would likely be considered a convenience. When people are not changing locations, however, they are not accustomed to changing their telephone numbers. As discussed above, changes in area codes (that do not necessarily involve changes in a customer's seven-digit local number) have caused significant subscriber discontent. In these circumstances, if competition is to develop for subscribers who are staying in the same place, service provider portability is critical, and should be the Commission's initial focus.[18]

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[14] *Id.* at ¶ 30.

[15] *See, e.g.,* Comments of AT&T at 38; Comments of the National Cable Television Ass'n at 6 ("NCTA Comments"); Comments of PCS PrimeCo at 8.

[16] Ad Hoc Comments at 10.

[17] *See, e.g.,* Ad Hoc Comments at 13; Comments of the California Cable Television Association at 3; MFS Comments at 2.

[18] Jones also understands that geographic portability will likely require substantially longer to implement. Similarly, service portability, such as between ISDN and POTS service, would not appear to raise the same public interest and competitive concerns as service provider portability.

B. The Commission Must Set A Definite Timetable For Each LEC Network To Be Re-Engineered To Permit Service Provider Portability.

Incumbent LECs have no incentive to implement service provider portability and, left to their own devices, can be expected to delay the process for as long as possible. Without a clear and binding timetable from this Commission, therefore, number portability is unlikely to actually be implemented in many areas.

In some respects, the situation regarding number portability is analogous to that involving the deployment of equal access following divestiture. It is hard to imagine the local exchange industry taking the necessary steps to facilitate long distance competition without unambiguous timetables imposed by the decree court and by this Commission.[19] Yet in the equal access context, the Bell Operating Companies, which faced the most stringent equal access obligations, were not even allowed into the long distance market being opened up to competition. Other than a general desire to avoid spending money, therefore, they had little direct economic incentive to delay the deployment of equal access.[20] In the number portability context, by contrast, the required network modifications will facilitate direct competition with the LECs in their core local exchange markets. They can hardly be expected to take these steps voluntarily.

In this regard, several parties have proposed specific time frames for the deployment of full number portability. For example, several commenters proposed that the Commission require service provider number portability in the top 100 MSAs within two years of a Commission order in this proceeding.[21] MFS pointed out that results from presently ongoing trials will be available by the third quarter of 1996, and suggested that the implementation date for true number portability should be no later than six months after that time for the top 100

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[19] *See MTS and WATS Market Structure Phase III,* Report and Order 100 FCC 2d 860 (1985).

[20] The exception was situations in which equal access would facilitate lawful intraLATA toll competition.

[21] *See, e.g.,* Ad Hoc Comments at 15; Comments of Sprint Corp. at 1.

MSAs.[22] Jones endorses these comments, and urges the Commission to adopt and rigorously enforce a deployment schedule at least as aggressive as that proposed by Ad Hoc and Sprint.

C. A Database Solution Appears To Be The Most Feasible Over Both The Short And Long Term.

The comments strongly suggest that, of the various number portability schemes mentioned in the NPRM, the public interest will be best served by a plan that utilizes a database model in which the next-to-last carrier performs the database dips (*i.e.*, the "N-1" model).[23] First, it is hard to conceive of a viable number portability arrangement that can be used by numerous competing local exchange carriers that does not involve the use of a database with number portability information available to all carriers. Second, the N-1 model allows the database dip to be made at the point in call processing that will maximize the efficiency of call routing.[24] Third, assuming that both geographic and service provider portability serve the public interest, a database solution used to provide service provider portability in the near term will provide a technical platform that should be able to be modified to accommodate other types of number portability. Finally, a database solution will require all major LECs to implement the capability of performing database dips on local calls, which should facilitate not only geographic and service portability, but the deployment of other advanced services as well.[25]

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[22] MFS Comments at 8.

[23] *NPRM* at ¶¶ 33-40.

[24] For local calls, the originating LEC will perform the database look-up and either compete the call itself or transfer it to a competitor. For incoming long distance calls, the call will arrive in the region after being routed in the manner the long distance company finds most efficient, then terminated to the appropriate competing local exchange carrier on the basis of the information obtained from the database dip. In either case, the call is routed as efficiently as possible in a competitive environment with multiple possible "final" carriers in any given region.

[25] Indeed, AT&T points out that an advantage of its particular database solution is that no new call processing technologies are required. Instead, existing SS7 Initial Address Message parameters can be used. AT&T Comments at 19, n.25; *see also* MCI Comments at 16.

In this connection, it is clear that the GTE proposal regarding the implementation and cost of number portability is completely unacceptable. As several other commenters noted, GTE's proposal is not a form of number portability at all, as it would require parties wishing to change service providers to obtain a new 700 telephone number.[26] Indeed, GTE's proposal, like the comments of several other LECs, is premised on the fundamentally flawed notion that number portability should be viewed as a "service," like call forwarding or caller ID, that consumers order on an individual basis.[27] Treating number portability as just another service would be antithetical to the fundamental premise behind number portability — that telephone numbers are not the property or exclusive province of incumbent LECs, but are, instead, a feature of the network that allows consumers to communicate.

III. THE COMMISSION SHOULD REQUIRE ALL COMPETING LECS TO BEAR THEIR OWN COSTS OF ACCOMMODATING NUMBER PORTABILITY.

In the NPRM, the Commission requested comments on the recovery of the costs of number portability.[28] In response, most parties advocated that each provider of local exchange service, whether it be an incumbent LEC or a new entrant, be responsible for recovering its own costs of implementing number portability.[29] A few LECs, however, asserted that new entrants should bear the cost of incumbent LECs' re-engineering to implement number portability.[30] For several reasons, the public interest will clearly be served by leaving the costs of implementing number portability with each affected LEC.

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[26] GTE Comments at 39.

[27] *See, e.g.*, GTE Comments at 15 ("number portability should be treated in the same way as ... any discretionary service"); Comments of Cincinnati Bell Telephone at 10.

[28] *NPRM* at ¶ 54.

[29] *See, e.g.*, AT&T Comments at 36; MFS Comments at 14.

[30] *See, e.g.*, Comments of SBC at 13; Cincinnati Bell Comments at 10-11.

At the outset, it would appear hard to justify a system in which new entrants pursuing the public policy goal of a competitive local exchange market are be called upon to pay their rivals for the most fundamental resource needed to compete: a telephone number. In this regard, the Commission has stated that numbering resources "should be viewed as essential resources to be shared as fairly and equitably as possible."[31] From this perspective, incumbent LECs plainly do not own existing numbering resources, so there is no reason to pay them for allowing others to have access to those resources.

Moreover, there is nothing unfair about giving new entrants access to numbering resources (which are now "built into" the monopoly local networks) at no charge, as long as each new entrant is similarly required to deploy the needed hardware and software to allow numbers to be "ported" to incumbents (or other new entrants) as competition evolves. From this perspective, the costs of number portability are indistinguishable from the costs of buying or leasing switching capacity, obtaining electric power for switches and local loops, mailing bills to and processing bills from customers, and so on.[32]

In addition, requiring each competing LEC to bear its own number portability costs will create sound incentives on all LECs to deploy the required equipment and conduct the necessary operations as efficiently as possible. Allowing incumbent LECs to separately identify and pass on the costs of their number portability efforts would diminish incentives to be efficient;

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[31] *708 Numbering Plan* at ¶ 28.

[32] Incumbent LEC claims that number portability costs are "incremental" to their existing operations and, therefore, should be viewed as being "caused" by either the new entrants or by customers seeking to change carriers, miss the mark. The assumption underlying such claims is that the status quo — a network design that does not accommodate customers' interest in changing local carriers — is the standard against which cost "causation" should be judged. This assumption is mistaken. Viable number portability is a prerequisite to meaningful competition. The LECs have had more than a decade since divestiture to take the steps needed to make number portability possible and to gracefully evolve their networks from a design in which a particular number is "hard-wired" to a given switch and line to one in which numbers are portable among providers, services, or locations. The fact that they have taken essentially no steps in this direction is fully understandable in light of their economic interest in maintaining a local monopoly, but does not constitute a reason to saddle new entrants with LEC number portability costs.

and allowing those costs to be passed on to marketplace rivals would create a perverse incentive to be *in*efficient, since under such a regime, the more expensive number portability is to the incumbent LEC, the harder it is for a new entrant to compete.[33]

IV. THE COMMISSION SHOULD MANDATE THAT INTERIM NUMBER PORTABILITY SOLUTIONS BE PROVIDED EITHER AT NO CHARGE OR AT A SUBSTANTIAL DISCOUNT BELOW INCREMENTAL COST.

In the NPRM, the Commission discussed certain interim number portability solutions, such as remote call forwarding ("RCF") and flexible direct inward dialing ("DID"), and the benefits and limitations of those mechanisms.[34] Numerous parties commented on RCF and DID, and the general consensus is clearly that these services are completely unacceptable as long-term number portability solutions.[35] Given that RCF and DID should serve limited, short-term roles (at most), the critical issue becomes how to price those services until incumbent LECs upgrade their networks to allow full number portability.[36]

Jones supports the comments of those parties that asserted that the Commission should require LECs to absorb the costs of RCF and DID interim portability arrangements as part

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[33] In a competitive local exchange market, incumbent LECs and new entrants alike should be forced to recover their number portability costs, along with all other basic local exchange costs, from their end users. To the extent that any competitor is able to perform these functions more efficiently, that competitor will be able to offer lower rates in the market and win customers from its rivals.

[34] *NPRM* at ¶¶ 55-62.

[35] *See, e.g.*, Ad Hoc Comments at 18. The LECs generally maintain that RCF and DID are proof that number portability and competition exist today. *See* Bell Atlantic Comments at 2, 4; USTA Comments at 3; *but see* SBC Comments at 16-18. Such claims should be disregarded as simply further evidence of the LECs' interest in stalling competition. In this regard, if the LECs were serious about suggesting low-cost interim portability alternatives, they would eagerly embrace unrestricted resale of their local exchange services, which, for existing customers, would provide a certain form of number portability at no cost to the incumbent whatsoever. Yet the LECs generally have any number of objections to allowing resale of their local exchange services.

[36] *NPRM* at ¶ 63.

of their basic service obligation in a competitive environment.[37] The same considerations that lead to the conclusion that each LEC should bear its own costs of implementing true number portability fully apply to the costs of interim number portability arrangements such as RCF and flexible DID.[38]

Finally, even if the Commission concludes that it will not require LECs to absorb the costs of providing interim number portability through RCF, flexible DID, or other temporary arrangements, it should not allow LECs to charge any substantial amount for those services.[39] As with "unequal" access arrangements (such as Feature Group A access provided in end offices that were not equal-access-capable), the Commission should recognize that RCF and DID are highly inferior to the true number portability that should be inherent in a competitive national telephone network. If new entrants are to be required to compensate incumbents for interim portability at all, therefore, the charge should be determined by substantially discounting the LECs' incremental cost of providing the interim arrangements. The 55% discount previously applied to FGA service provides a useful model in this connection. As a result, if any charge for interim number portability is to be imposed at all, a charge based on 45% of the incumbent LEC's incremental cost of providing the particular services used would not be inappropriate.

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[37] *See, e.g.,* Ad Hoc Comments at 20; Comments of Time Warner Communications Holdings at 21; NCTA Comments at 13.

[38] Just as incumbent LECs should not be permitted to charge a new entrant for the "service" of allowing the new entrant to effectively compete, new entrants should not be able to charge incumbent LECs for implementing such arrangements to provide service to customers who initially establish service with the new entrant and then switch to the incumbent LEC.

[39] *See, e.g.,* Sprint Comments at 18; Comments of the California Public Utilities Commission at 8.

CONCLUSION

For the foregoing reasons, the Commission should adopt a firm timetable for the implementation of true service provider portability, using a database architecture with responsibility for the database dip residing with the "N-1" carrier. In the interim, the Commission should require incumbent LECs to absorb the costs they incur to provide interim number portability using RCF and/or flexible DID, or, at most, allow a charge based on a 55% discount below the LEC's incremental cost of providing those capabilities.

Respectfully Submitted,

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